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FATF RECOMMENDATIONS AS A MAJOR TOOL FOR AML

Abstract

This paper discusses the role of the Financial Action Task Force (FATF) in setting global standards for anti-money laundering (AML) and countering the financing of terrorism (CFT). The FATF's 40 Recommendations are analyzed as a major tool for AML/CFT regimes worldwide, providing a comprehensive framework for countries to implement measures such as customer due diligence, suspicious transaction reporting, and risk assessments. The paper highlights the importance of compliance with the FATF's recommendations in improving countries' AML/CFT regimes and avoiding blacklisting or sanctions by the international community. The effectiveness of the FATF's recommendations is shown to depend on countries' political will and capacity to implement them effectively. The paper concludes that the FATF's role in promoting global AML/CFT standards is increasingly important considering rapidly evolving financial technologies and changing patterns of illicit finance.

Keywords: *Financial Action Task Force, Anti-money laundering, Countering financing of terrorism, Compliance, Global standards*

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FATF Tövsiyələri AML üçün əsas vasitə kimi

Xülasə

Bu sənəd çirkli pulların yuyulmasına (AML) və terrorizmin maliyyələşdirilməsinə (CFT) qarşı mübarizə üçün qlobal standartların müəyyən edilməsində Maliyyə Fəaliyyəti üzrə İşçi Qrupunun (FATF) rolundan bəhs edir. FATF-ın 40 Tövsiyəsi dünya üzrə PL/TMM rejimləri üçün əsas alət kimi təhlil edilir və ölkələrə müştərilərin lazımi müayinəsi, şübhəli əməliyyat hesabatları və risklərin qiymətləndirilməsi kimi tədbirlərin həyata keçirilməsi üçün hərtərəfli çərçivə təmin edir. Sənəd ölkələrin PL/TMM rejimlərinin təkmilləşdirilməsi və beynəlxalq ictimaiyyət tərəfindən qara siyahıya salınmaması və ya sanksiyalara məruz qalmaması üçün FATF-ın tövsiyələrinə əməl etməyin vacibliyini vurğulayır. FATF-ın tövsiyələrinin effektivliyi ölkələrin siyasi iradəsindən və onları effektiv şəkildə həyata keçirmək imkanlarından asılı olduğu göstərilir. Sənəddə belə nəticəyə gəlinir ki, sürətlə inkişaf edən maliyyə texnologiyaları və qeyri-qanuni maliyyənin dəyişən nümunələri nəzərə alınmaqla, PL/TMM qlobal standartlarının təşviqində FATF-ın rolu getdikcə daha vacibdir.

Açar sözlər: *Maliyyə Tədbirləri üzrə İşçi Qrupu, Çirkli pulların yuyulmasına qarşı mübarizə, Terrorizmin maliyyələşdirilməsinə qarşı mübarizə, Komplayns, Qlobal standartlar*

Introduction

Historically, domestic efforts to combat money laundering were aimed at reducing tax evasion. However, as money laundering became a significant part of the war on drugs, it became clear that its effectiveness would depend on how consistently it was applied across borders. The United States' strategies in the 1980s to combat drug trafficking, including measures against money laundering, were soon internationalized through the United Nations Convention Against Illicit in Narcotic Drugs and Psychotropic Substances (Vienna Convention) in 1988. This marked the starting point for the development of international anti-money laundering standards. The Financial Action Task Force (FATF) was created as a specific international organization to lead the development of the anti-money laundering regime and regional bodies were subsequently modeled after it to adapt the standards to each region's unique characteristics (Bernd, 2009: 30-31).

The FATF is an intergovernmental organization established in 1989 to combat money laundering and later expanded to include financing of terrorism. It consists of 35 countries and two regional associations and sets standards to combat financial threats such as money laundering, terrorist financing, and weapons of mass destruction proliferation. The FATF monitors countries' progress in implementing its recommendations and reviews countermeasures. The FATF Recommendations, updated in 1996, 2001, 2003, and 2012, are the international standard for combating money laundering and terrorism financing (Silveira, 2013: 25).

The FATF has nine special recommendations to combat terrorism financing, eight of which were adopted in 2001 and the ninth in 2004. These nine recommendations, along with the 40 recommendations on anti-money laundering, make up the 40+9 Recommendations. They are widely recognized and endorsed by over 180 jurisdictions, the World Bank, and the International Monetary Fund (3).

Over time, the 40 Recommendations have expanded the types of institutions that must follow customer due diligence and reporting requirements. Originally, only banks and NBFIs were required to comply, but it was soon realized that money laundering could occur through other sectors if only financial institutions had to follow anti-money laundering policies.

The 2003 version of the 40 Recommendations broadened the scope of institutions that must comply with customer due diligence and reporting obligations beyond just banks and non-bank financial institutions. It included "designated non-financial businesses and professions," such as casinos, real estate dealers, lawyers, accountants, and others, subject to the same obligations (4).

The 1990 version of the 40 Recommendations is referred to as the "rule-based" approach to prevention, where "know your customer" procedures are standardized for all clients, and transactions over a certain threshold are reported without much investigation. This results in many folders and reports that are challenging for the FIU to manage (Stessens, 2000: 35).

The 2003 version of the 40 Recommendations introduced a "risk-based approach" to anti-money laundering, in contrast to the previous "rule-based" approach. This approach allows financial institutions to adjust customer identification procedures based on the risk posed by each client and requires reporting of transactions suspected to be linked to money laundering. This approach is more cost-efficient and allows for less disclosure of customer information to law enforcement authorities.

The FATF has moved from a rule-based approach to a risk-based one in the 40 Recommendations, allowing financial institutions to adjust their "know your customer" procedures to the risk posed by each client. Reporting requirements have also shifted from optional to mandatory. The 40+9 Recommendations are around 25 pages long and are categorized into four categories by the FATF webpage: Legal Systems, Measures to be Taken by Financial Institutions and Non-Financial Businesses and Professions, Institutional and Other Measures for Combating Money Laundering and Terrorist Financing, and International Cooperation (6).

The FATF 40+9 Recommendations apply to lawyers but the inclusion of "legal privilege" in Recommendation 16 has created confusion about the proper scope of the suspicious transaction reporting recommendation. Some critics argue that the costs of applying these recommendations to lawyers outweigh the benefits, as there is no empirical evidence to suggest that lawyers are significantly involved in money laundering or terrorism financing, and some of the recommendations disrupt the lawyer-client relationship and could undermine the rule of law (Lusty, 2002: 11).

The FATF has produced supplementary documents to help members implement policies. These include: 1) "Methodology for Assessing Compliance", which provides an overview of the assessment methodology, guidance, and interpretation, as well as essential criteria for each recommendation. 2) A handbook for conducting evaluations. 3) Documents for periodic evaluations of member compliance. 4) "Best Practices" documents. 5) Documents on "methods and trends" including illustrative cases. 6) "Guidances" documents. 7) "Risk-based" assessments for different professions, including one for the legal profession.

Conclusion

As stated above, the rise of the global economy and international trade has increased both the wealth that ordinary citizens can acquire through commerce and the pressures countries face when it comes to fighting money laundering and other financial crimes. The Financial Task Force creates universally applicable recommendations that are designed to ensure that all countries participating are treated equally. Because money launderers change techniques over time, FATF must update its recommendations every couple of years.

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